



INSPECTOR GENERAL REPORT

2005-07-0360

August 1, 2005

On July 21, 2005, Daniel J. Parker ("Complainant")¹ filed a formal request for an investigation by the Office of Inspector General ("OIG").² Complainant alleged that Governor Mitchell E. Daniels, Jr. violated Indiana's ethics rules prohibiting conflicts of interest by state officers by attending an event in Vincennes on July 19, 2005. Complainant's request cited an excerpt from a newspaper article in the *Evansville Courier & Press* stating that, "Gov. Mitch Daniels stopped by in his RV1 and people who made the \$25 per family donation to get into the Woodruff fish fry on Tuesday lined up to shake hands and get pictures with the governor, tour RV1... among other activities." The implication of this request is that Governor Daniels' use of a state-owned recreational vehicle ("RV") to travel to a political fundraiser was improper under state ethics rules.

After an investigation into this request, the OIG concludes that the Indiana Ethics Code was not violated and further investigation is unwarranted.

I.

Complainant's request implicates two provisions of the Indiana Ethics Code, namely 40 IAC 2-1-7.1 (the political activity rule), and 40 IAC 2-1-9(f) (the use of state resources rule).

40 IAC 2-1-7.1 provides that "a state employee shall not engage in political activity...when on duty or acting in an official capacity." State officers, such as the Governor, are excluded from this rule. This exclusion recognizes that state officers should not be restricted from engaging in political activities due to the political nature of their positions as elected officials.

40 IAC 2-1-9(f) prohibits a state officer, as well as other state employees, from using "state materials, funds, property, personnel, facilities, or equipment for any purpose

¹ This request for investigation was signed by Daniel J. Parker in his capacity as "Chair, Indiana Democratic Party" and was submitted on "Indiana Democratic Party" stationary.

² See Exhibit A, attached hereto.

other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and benefit by such use.”

Therefore, in order for Complainant’s allegations to support a violation of the plain language of the “use of state resources” rule, there must be evidence that (1) state property was used for a purpose other than official state business, and if so, (2) that there was no written policy permitting that use.³

Although the RV may be seen as an extension of the office of the Governor, it is fundamentally a means of transportation. On this point, it is difficult not to acknowledge that elected state officers will inevitably be transported for occasional personal or political purposes in a state vehicle when they: (1) receive a state vehicle by virtue of their office, (2) hold their official titles and positions continuously and around-the-clock throughout their terms in office, and (3) are under no constraints in terms of the political activities in which they may engage while in office.

Our investigation further received various acknowledgements in the media that past governors used state vehicles for purposes of travel to political events, with the only rationalization being that the expenses associated with such travel were reimbursed to the state. Yet the evidence indicates that such reimbursement practices were sporadic at best. Moreover, reimbursement is neither a component of, nor an excuse for noncompliance with, the “use of state resources rule.”

II.

A.

On the issue of investigating whether the RV was used in violation of the rule, and specifically on whether political donations were given in order to tour the RV, we have conducted several interviews and served document requests. The following facts were discovered. Other than as specifically indicated, most, if not all, of the information was undisputed.

³ The Indiana Ethics Commission has previously addressed in 2003 a similar issue in Official Advisory Opinion No. 03-I-1. We do not address today the extent to which the use of the RV, as an extended office of the Governor, falls within the principle articulated in the earlier Advisory Opinion. This is because there is no evidence that anyone entered the RV or that, indeed, the RV was even involved in the event. Yet the Governor could have relied on this Advisory Opinion. On the issue of the precedential value of Advisory Opinions, 40 IAC 2-2-1(h) states that an Advisory Opinion “is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on it in good faith....” This language does not state that an Advisory Opinion has no precedential advisory authority to others. In fact, it is plausible to contend that an advisory benefit to the public is contemplated in 40 IAC 2-2-6 which requires the commission staff to “periodically publish for distribution the accumulated advisory opinions with the names removed in a format explaining the facts, the question and the commission’s opinion.”

1.

It was determined that Governor Daniels attended a political fundraiser for State Representative Troy Woodruff in Vincennes, Indiana at 6:30 p.m. on July 19, 2005. Daniels traveled to that fundraiser, after normal business hours, in the RV driven by Indiana State Police ("ISP") officer Vance Patton pursuant to ISP policy ENF-020. Trooper Patton confirmed in his interview that he parked the RV in a parking lot at a public park during the event. Other vehicles were near the RV. Both he and the Governor left the RV and went to attend the fish fry and greet people who were attending the event. He advised that no one administered tours of the RV. Patton stated that the RV was always within his sight and he did not observe any member of the public going into the RV.

These facts were corroborated by interviews with others who attended the event. Other unsubstantiated reports have indicated, however, that some individuals may have entered the RV upon its initial arrival at the park. While not necessarily an indication that this activity was in any way connected with the event, it would be consistent with what ISP personnel described as the Governor's typical policy to allow the public to tour the RV at any stop, when the vehicle is not being used for business meetings. Yet the information from our interviews was consistent with Trooper Patton's statement that he saw no one from the public enter the RV.

2.

Complainant cited a newspaper article that states that unnamed attendees of the fundraiser toured the RV. We contacted this reporter on Tuesday, July 26, 2005, in an attempt to receive the information regarding the Complainant's allegations. This reporter refused to provide any information. However, the following day, Wednesday, July 27, 2005, eight days after the event, this reporter published an article on the Vincennes event and revealed the name of a family who attended the event. This article stated in relevant part:

When the RV first pulled up, several people wandered over to shake hands with the governor and get their photos taken with him. Some also were allowed to look around in the RV.⁴

The article goes on to name the husband and wife who:

[t]ook their twin 6-year-old daughters...inside the RV in part because the girls are big fans of U.S. President George Bush and were curious about Daniels because he once worked for Bush as the president's budget director.⁵

⁴ Evansville CourierPress: News (www.courierpress.com).

⁵ *Id.*

Having the names of this family revealed in the article, we contacted this family on Wednesday, July 27, 2005, after obtaining their home telephone number by dialing information. We spoke with the wife at her home and asked her if this information as reported in the article was true. She denied the information in the article. She stated that none of her family went into the RV. She further stated that her family attended the event and ate at a picnic table, could see the RV, that they wanted to go inside the RV but did not, and that she also saw no other member from the public go into the RV.

3.

On July 28, 2005, we contacted two ISP officers who were assigned out of the Evansville ISP Post to give additional security to the Governor at the event. First Sergeant Greg Winkler reports that he was near the RV almost the entire time of the event and that he saw no person go inside the RV, other than the Governor's staff.

4.

The second ISP officer assigned to the event for additional security was Trooper Matt Dillon. He stated on July 28, 2005 that he was not at the RV the entire time of the event, but he only saw the Governor's staff go into it.

Both ISP officers stated that no one was charged for taking a tour of the RV and that they saw no one take a tour of the RV.

5.

We also interviewed Eric Holcomb, an employee of the Governor's office who attended the event. He stated that he had lived in Vincennes and chose the occasion as an opportunity to visit with people he knew there. He stated there was no written itinerary or agenda which contained any tour of the RV. He also said the RV was parked in an area approximately 100 yards from the location of the fish fry and was parked with other vehicles. He saw no one tour the RV, but added that if someone had, it probably would have been a spontaneous and unplanned occurrence as has happened in the past. He stated that Governor Daniels' physical presence during the event was away from the RV, and thus he would not have had awareness of anyone touring it, if it had occurred.

6.

Investigators also obtained the official invitation to the event, and that invitation makes no reference to the RV. We likewise could not identify any other communications or advertisements that would suggest that a tour of the RV was part of the event.

In summary, our investigation shows that the RV was not in any way connected with a partisan event, other than as a means of transport for the Governor to get to the location in accordance with applicable policy (discussed below). With our focus on whether the RV was used to obtain political donations in alleged violation of an ethics

rule, the evidence did not even show that members of the public entered the RV for any purpose.

B.

Even if the allegations in this case had shown that the RV was used for a purpose other than state business, our investigation determined that there were written policies on the use of the state property in compliance with 40 IAC 2-1-9(f).

There is a longstanding practice in Indiana of providing governors and other state officers with a state vehicle for their general use. Specifically, there are several ISP policies that not only permit, but require ISP to provide transportation for the Governor to all events, regardless of their nature. Major Tom Melville of ISP was interviewed. He is in charge of the Governor's Security Detail, and provided copies of these Standard Operating Procedures ("SOP"). These written policies have resulted in a long standing practice and security protocol, dating back through all governors in his recent memory. These require the Security Detail to provide transportation for the Governor to all events, regardless of whether those events are personal, business, or of a political nature. That policy applies to all state owned vehicles, and over the years, has included cars, SUVs, helicopters, planes, and now an RV.

More specifically, ISP SOP ENF-020 ("Governor's Security and Dignitary Protection") requires ISP to provide "security to and from all sites." Furthermore, "scheduling, arranging, and/or providing transportation" is inextricably linked with ISP security protocols. For example, INV-001 also establishes procedures for investigating threats of violence against public officials, and ENF-057 establishes procedures for the safety of government officials.

There are, therefore, undisputed and established written policies that required the Governor to be transported by ISP personnel in a state vehicle on July 19, 2005, as contemplated by, and in compliance with, the "use of state resources" ethics rule.

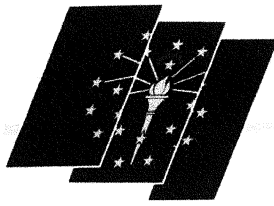
III.

In conclusion, we are unable to identify evidence that Governor Daniels violated 40 IAC 2-1-9(f) or other provisions of the Indiana Ethics Code. Accordingly, the allegations contained in the request for investigation filed by Complainant are without merit and require no further investigation.

Dated this 1st day of August, 2005.

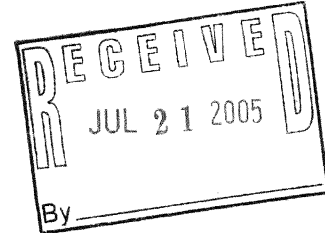


David O. Thomas, Inspector General



Indiana Democratic Party

July 21, 2005



Mr. David Thomas, Inspector General
Indiana Government Center South, Room W198
402 West Washington Street
Indianapolis, Indiana 46204

Dear Inspector General Thomas:

Because of your strong commitment to the highest standard of ethics in Indiana state government, I request your attention to an incident that occurred just this week involving political use of state property.

An article that appeared in the July 20th edition of the *Evansville Courier and Press* described a political fundraiser for State Representative Troy Woodruff in which "Gov. Mitch Daniels stopped by in his RV1" and "people who made the \$25 per family donation to get into the Woodruff fish fry on Tuesday lined up to shake hands and get pictures with the governor, tour RV1..." among other activities. The full text of this article follows.

As you know, Governor Daniels has strictly prohibited state employees from accepting gifts. In accepting this recreational vehicle, the Governor made very clear that RV1 was a gift not to him personally, but to the State of Indiana, and therefore state property.

Section 40 of the Indiana Annotated Code, 2-1-9 (f), reads, "A state officer or employee shall not make use of state material, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and benefit of such use."

Given these facts, I would appreciate your prompt attention to this matter. I look forward to hearing your timely response.

Sincerely,

Daniel J. Parker
Chair, Indiana Democratic Party

Cc: Mary Lee Comer, Director
Indiana State Ethics Commission